

HOUSE BILL REPORT

SHB 2639

As Passed Legislature

Title: An act relating to procurement of renewable resources by public agencies.

Brief Description: Regarding the procurement of renewable resources.

Sponsors: By House Committee on Local Government (originally sponsored by Representatives Takko, Kretz, Blake, Condotta, VanDeWege and Haler).

Brief History:

Committee Activity:

Local Government: 1/29/08, 2/4/08 [DPS].

Floor Activity:

Passed House: 2/15/08, 92-2.

Senate Amended.

Passed Senate: 3/6/08, 46-2.

House Concurred.

Passed House: 3/8/08, 93-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Adds limited liability corporations to the categories of organizational entities that a public agency may utilize for the purpose of entering into agreements for joint or cooperative action with other public agencies.
- Authorizes public utility districts (PUDs) and other specified entities to enter into agreements for the creation of electric generating plants powered by eligible renewable resources and creates a regulatory scheme regarding such agreements.
- Agreements among PUDs, cities, and other eligible entities may provide for the formation, operation, and ownership of a separate legal entity that may own common facilities.
- Requires that projects implemented by a PUD and other entities participating in the development of the facilities authorized under the act comply with state "prevailing wage" requirements.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Simpson, Chair; Takko, Vice Chair; Schindler, Assistant Ranking Minority Member; Eddy, Nelson and Schmick.

Minority Report: Do not pass. Signed by 1 member: Representative Warnick, Ranking Minority Member.

Staff: Thamas Osborn (786-7129).

Background:

Overview of Public Utility Districts

A public utility district (PUD) is a type of special purpose district authorized for the purpose of generating and distributing electricity, providing water and sewer services, and providing telecommunications services. A PUD may operate on a countywide basis or may encompass a smaller jurisdiction. However, most PUDs have jurisdictional boundaries that are coextensive with a county and function as a regional governing body with respect to providing their statutorily authorized services to the public. There are currently 28 operating PUDs in this state, many of which provide a mix of services: 23 provide electrical services; 19 provide water and/or wastewater services; and 13 provide wholesale broadband telecommunications services. Public utility districts are governed by a board of either three or five elected commissioners.

Joint and/or Cooperative Action Among Public Agencies

State law authorizes PUDs, and other public agencies, to enter into agreements with each other for the joint exercise of the authority conferred upon them by statute. This grant of authority allows two or more public agencies to enter into agreements with one another for joint or cooperative action provided the agreement describes the following:

- the duration of the agreement;
- the precise organization, composition, and nature of any separate legal or administrative entity created by the agreement;
- the purpose(s) of the agreement;
- the manner of financing of the joint or cooperative undertaking;
- the system for establishing and maintaining the budget; and
- the method(s) for terminating the agreement and the disposition of property.

General Rules for Agreements for Joint and/or Cooperative Action Among Cities, Public Agencies, and Private Electrical Companies Subject to State Regulation

Subject to specified requirements, certain public entities, including PUDs, and private electrical companies regulated either by the State of Washington or the State of Oregon, are authorized to enter into joint agreements for the undivided ownership of the following types of facilities:

- any type of facilities related to the generation and/or distribution of electric power, including nuclear power generating plants and facilities; and

- electric transmission facilities.

Such joint agreements must provide that each participant own a percentage of the facility equal to the percentage of its contribution to the acquisition or construction of the facility and each must control a like percentage of the electric output of the facility.

Authority of PUDs to Sell, Lease, or Convey their Facilities and Assets

A PUD may sell, lease, or convey its facilities and assets in accordance with specified procedures and subject to the approval of the district voters. Generally speaking, PUDs are subject to the same regulations as cities and towns with respect to the disposition district property.

However, the governing statutes provide numerous exceptions to the general rule requiring voter approval for the disposition of property by a PUD. These exceptions are wide-ranging and allow disposition of property without voter approval under circumstances that include the following:

- where the property lies outside the boundaries of the district and is being sold to another PUD or other public entity;
- if the property is obsolete or otherwise not useable and is no longer needed by the PUD; and
- the property is being sold to another public utility, private utility, utility contractor or governmental entity for not less than fair market value and in response to specified circumstances.

Auditing of Claims Against a PUD

All financial claims presented against a PUD or other public entity related to contracts, furnishing materials, services rendered, and performing labor must be audited in accordance with specified requirements before the claim may be paid. The payment of any claim is contingent on the auditor certifying that the claim is a just, due, and unpaid obligation.

The Energy Independence Act of 2007

Enacted pursuant to a citizen initiative approved by the voters in 2006, the Energy Independence Act (Act) requires that large utilities obtain 15 percent of their electricity from new, renewable resources such as solar and wind by the year 2020. The Act generally requires that utilities undertake cost-effective energy conservation and sets forth goals and requirements related to the realization of its stated policies. It also provides the definition of key terms found within the Act, including definitions for "renewable resource" and "eligible renewable resource."

"Renewable resource" means specified natural resources related to the generation of electrical power. Among the resources identified in the definition are the following: water, wind, solar energy, geothermal energy, landfill gas, wave/ocean/tidal power, specified types of biodiesel fuel, specified types of biomass energy, and several others.

"Eligible renewable resource" means either: (1) electricity produced by a generation facility powered by a renewable resource other than fresh water that began operation before March 31, 1999, where the facility is located in the Pacific Northwest or is electricity delivered into

Washington from out of state and satisfies specified requirements; or (2) electricity resulting from efficiency improvements to specified categories of hydroelectric projects in the Pacific Northwest and meeting other specified requirements.

Overview of Limited Liability Corporations

State law authorizes the creation of several types of business-related entities with different organizational structures and requirements. Among such legally authorized entities are general partnerships, corporations, and limited liability corporations. The factors a business or other entity may consider when selecting its structure include: limiting liability, taxation, transferability of interests, and desired level of formality.

A "limited liability corporation" (LLC) is formed by one or more individuals or entities through a special written agreement called a certificate of formation. The agreement details the organization of the LLC, including provisions for management, assignability of interests, and distribution of profits and losses. An LLC exists in perpetuity unless the articles of formation state an ending time or event.

Other characteristics for an LLC are:

- limited personal liability of the members for the LLC's debts and actions (similar to a corporation);
- ability for the owners to participate actively in management;
- no double taxation (profits are taxed personally at the member level, not the LLC level);
- no formal requirements concerning annual meetings and record-keeping; and
- ability to generally own property and sign contracts.

Summary of Substitute Bill:

Authority of a PUD to Participate in a Limited Liability Partnership

The bill adds LLCs to the categories of corporate entities that a PUD or other public agency may utilize for the purpose of entering into agreements for joint or cooperative action with other public agencies and other specified corporate entities.

Special Requirements for Joint Public/Private Agreements Regarding the Ownership of Electricity Generating Plants Powered By a "Renewable Natural Resource"

In conjunction with specified public agencies and private entities, a PUD is authorized to participate in agreements for cooperative ventures or participate in separate legal entities pertaining to the ownership of any type of electric generating plants powered by an "*eligible renewable resource*" as well as the transmission facilities related to such plants. This authority includes that required for the planning, financing, acquisition, construction, operation, and maintenance of such facilities. In addition to PUDs, the entities eligible to participate in such cooperative agreements and activities include:

- first class cities and other cities that operate electric generating facilities or distribution systems;
- any eligible public agency;
- electrical utilities subject to regulation by any state;

- rural electric cooperatives and their wholly owned subsidiaries;
- electric generation and transmission cooperatives and their wholly owned subsidiaries; and
- any qualifying joint operating agency or legal entity.

The agreements authorized under this section of the act must contain the following provisions:

- each public agency or entity participating in the agreement must own a percentage of any common facility, or a percentage of any separate legal entity, equal to the percentage of the money furnished or the value of the property supplied by it for the undertaking; and
- each public agency or entity must own and control, or have a right to own and control, a like percentage of the electrical output of the common facility.

Agreements among PUDs, cities, and other eligible entities may provide for the formation, operation, and ownership of a separate legal entity that may own common facilities.

Public Utility District Sale of an Electric Generating Project Powered by an Eligible Renewable Resource

A PUD may sell, convey or otherwise dispose of all or part of a an electric generating project powered by an "eligible renewable resource" without the approval of the voters, provided the following conditions are met:

- the PUD retains the right to purchase all or part of the energy generated by the project during the period that it does not have a direct or indirect ownership interest in the project; and
- the PUD retains the option to repurchase all or part of the project at or below fair market value.

Agreements for the sale, lease, or disposition of projects powered by an eligible renewable resource may include a lease-back provision and an option to repurchase the property at the termination of the lease.

Auditing Standards Regarding Advance Payment of Obligations Owed Under a Contract

Applicable auditing provisions are amended to allow the payment of a claim against a public agency provided the auditor finds that any advance payment is due and payable pursuant to a contract, or that such advance payment is available as an option for full or partial fulfillment of an obligation pursuant to a contract.

Prevailing Wage Requirements

Projects implemented by public utility districts and other entities participating in the development of the facilities authorized under this act must comply with state "prevailing wage" requirements.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This bill should be passed because it will make it much easier to build and develop energy production facilities that are both economical and beneficial to the environment. The bill is intended to implement the goals and requirements of Initiative 937 with respect to the development of electric generation facilities using renewable resources such as wind and solar. In essence, the bill makes clarifying changes to existing statutes that will facilitate the creation of the cooperative entities needed to create the facilities and to make it easier to finance such projects. Under the bill, PUDs are explicitly allowed to participate in such cooperative ventures with other specified governmental and private entities. Some of the clarifying language in the bill will make it easier to obtain the necessary bonds and will make the completion of the projects more economical. Overall, the effect of the bill will be to provide cheaper power to the public while at the same time using environmentally friendly renewable resources.

(Opposed) None.

Persons Testifying: (In support) Representative Takko, prime sponsor; Dave Warren, Washington Public Utility Districts Association; Bob Guenther, International Brotherhood of Electrical Workers, Local 77; Dave Andrew, Cowlitz Public Utility District; Don Cohen, Washington Public Utility Districts Association; and Doug Goe, Orrick Herrington.

Persons Signed In To Testify But Not Testifying: None.